

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

JOSEPH KENNARD SHELTON,)	
)	
Petitioner,)	
)	1:18CV108
v.)	1:11CR397-1
)	
UNITED STATES OF AMERICA,)	
)	
Respondent.)	

ORDER

This matter is before this court for review of the Recommendation filed on February 16, 2018, by the Magistrate Judge in accordance with 28 U.S.C. § 636(b). (Doc. 85.) In the Recommendation, the Magistrate Judge recommends that Petitioner's request for disqualification (Doc. 82) and "Motion to Subpoena" (Doc. 83) be denied and that this action be dismissed without prejudice for failure to obtain certification for this § 2255 application by filing a Motion for Authorization in the Court of Appeals as required by 28 U.S.C. §§ 2255 and 2244 and Fourth Circuit Local Rule 22(d). The Recommendation was served on the parties to this action on February 16, 2018 (Doc. 86). Petitioner timely filed objections (Doc. 87) to the Recommendation.

This court is required to "make a de novo determination of those portions of the [Magistrate Judge's] report or specified proposed findings or recommendations to which objection is made." 28 U.S.C. § 636(b)(1). This court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the [M]agistrate [J]udge. . . . [O]r recommit the matter to the [M]agistrate [J]udge with instructions." Id.

This court has appropriately reviewed the portions of the Recommendation to which objections were made and has made a de novo determination which is in accord with the Magistrate Judge's Recommendation. This court therefore adopts the Recommendation.

IT IS THEREFORE ORDERED that the Magistrate Judge's Recommendation (Doc. 85) is **ADOPTED**. **IT IS FURTHER ORDERED** that Petitioner's document titled "Disqualification of District Judge William L. Osteen, Jr." (Doc. 82) and "Motion to Subpoena" (Doc. 83) are construed as motions to vacate, set aside, or correct sentence pursuant to 28 U.S.C. § 2255, and that this action is hereby **DISMISSED WITHOUT PREJUDICE** for failure to obtain certification for this § 2255 application by filing a Motion for Authorization in the Court of Appeals as required by 28 U.S.C. §§ 2255 and 2244 and Fourth Circuit Local Rule 22(d). A Judgment dismissing this action will be entered contemporaneously with

this Order. Finding no substantial issue for appeal concerning the denial of a constitutional right affecting the conviction, nor a debatable procedural ruling, a certificate of appealability is not issued.

This the 3rd day of August, 2018.

William L. Ostun, Jr.

United States District Judge